No. 15064

United States Court of Appeals

for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM F. HOLCOMB and IDRIS M. HOLCOMB,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. 4-24-56

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF COUNSEL

LLOYD H. BURKE,
United States Attorney,

LYNN J. GILLARD,
Assistant United States Attorney,
Post Office Building,
San Francisco, California,

CHARLES H. RICE,
Asst. U. S. Attorney General,

LEE A. JACKSON,
Attorney, Department of Justice,
Washington 25, D. C.

Counsel for Appellant.

BRONSON, BRONSON & McKINNON,
1500 Mills Tower,
220 Bush Street,
San Francisco, California,

Counsel for Appellees.

In the District Court of the United States for the Northern District of California
Southern Division

No. 34443

WILLIAM F. HOLCOMB and IDRIS M. HOLCOMB,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR REFUND OF OVERPAYMENT OF INCOME TAXES

Plaintiffs for their cause of action against the above-named defendant allege:

I.

This is an action against the United States of America for recovery of an overpayment of internal revenue taxes, of which this Court has jurisdiction under the provisions of 28 U.S.C., §1346(a)(1).

II.

At all times herein mentioned and now, plaintiffs have been citizens of the United States of America and residents of Alameda County, State of California. At all times herein mentioned plaintiffs kept their books of account and filed their income tax returns on a calendar year basis.

III.

The nature of plaintiffs' claim is for the recovery of $8,293.70 in principal amount of income taxes, erroneously and excessively assessed and collected from plaintiffs for the calendar year 1951 together with interest thereon.

IV.

The facts upon which said claim is based are as follows:

(a) At all times during the calendar year 1951 plaintiffs were married.

(b) Plaintiffs filed separate returns for the calendar year 1951. Plaintiff William F. Holcomb in his separate return for said year reported a net income of $53,887.39 and paid an income tax to defendant of $29,661.54. Subsequently, upon the audit of William F. Holcomb's separte return, his net income for the calendar year 1951 was determined to be $68,880.59 and an additional tax of $11,493.32 was assessed and on or about May 16, 1954, said plaintiff paid said additional tax together with interest thereon. Plaintiff Idris M. Holcomb in her separate return for the calendar year 1951 reported a net income of $1,553.31 and paid to defendant an income tax of $72.08, making a total income tax paid to the defendant by both plaintiffs for the calendar year 1951 the sum of $41,226.94. Plaintiffs have paid all amounts previously assessed against them as income tax for the calendar year 1951.

(c) On or about June 23, 1954, plaintiffs filed a joint return for the year 1951 as permitted by

§51(g) of the Internal Revenue Code then in force, showing a total income tax liability of $32,933.24. Thus plaintiffs have erroneously overpaid their income tax for said year by the amount of $8,293.70.

(d) Concurrently with the filing of said joint return and within the period within which such claims could be legally filed under §322 of the Internal Revenue Code then in force, plaintiffs also filed with the Director of Internal Revenue in the City of San Francisco, State of California, a claim for refund for said $8,293.70, erroneously and excessively collected by defendant from plaintiffs for the calendar year 1951, together with interest as allowed by law. A copy of said claim for refund is attached hereto marked Exhibit "A" and made a part hereof.

(e) More than six (6) months have expired since the filing of the aforesaid claim for refund on or about June 23, 1954, and the commencement of this suit, and no notice of the disallowance of said claim has been mailed to plaintiffs by registered mail by the Commissioner of Internal Revenue. Under date of January 10, 1954, plaintiffs did receive a letter from the District Director of Internal Revenue, by ordinary mail, disallowing said claim for refund in full. A true copy of said letter is attached hereto, marked Exhibit "B" and made a part hereof.

V.

The sum of $8,293.70, erroneously and excessively collected by defendant from plaintiffs for the calen-

dar year 1951, together with interest thereon, is now due and owing to plaintiffs by defendant, but defendant refuses to refund to plaintiffs said sum or any part thereof.

VI.

By virtue of the aforesaid, defendant became and is now indebted to the plaintiffs in the amount of $8,293.70 with interest as provided by law.

Wherefore, plaintiffs William F. Holcomb and Idris M. Holcomb pray for judgment in their favor and against the defendant for the sum of $8,293.70 together with interest on said sum as permitted by law, and for such other and further relief as the Court may find just in the premises.

/s/ ROY A. BRONSON,

/s/ MAX WEINGARTEN,

BRONSON, BRONSON & McKINNON,
Attorneys for Plaintiffs,

By /s/ ROY A. BRONSON.

Form 843,
U. S. Treasury Department
Internal Revenue Service
(Revised June, 1951)

CLAIM

To Be Filed with the Collector Where Assessment Was Made or Tax Paid

Collector's Stamp: [Blank.]

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Name of taxpayer or purchaser of stamps: William F. and Idris M. Holcomb.

Street address: c/o Bronson, Bronson & McKinnon, 220 Bush Street.

City, postal zone number, and state: San Francisco 4, California.

1. District in which return (if any) was filed: First Cal. District, San Francisco, Calif.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 1/1, 1951, to 12/31, 1951.

3. Kind of tax: Income Tax.

4. Amount of assessment, $41,226.94; dates of payment, 1/14/1952 and 5/17/1954.

5. Date stamps were purchased from the Government:

6. Amount to be refunded: with interest, $8,293.70.

7. Amount to be abated (not applicable to income, estate, or gift taxes):

The claimant believes that this claim should be allowed for the following reasons:

(See Attached Statement)

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Dated: June 17, 1954.

/s/ WILLIAM F. HOLCOMB,

By /s/ MAX WEINGARTEN,
Attorney in Fact,

/s/ MRS. IDRIS M. HOLCOMB.

William F. and Idris M. Holcomb

On August 13, 1951, an interlocutory decree was entered by the Superior Court in and for the County of Alameda, State of California, in the divorce proceeding Holcomb v. Holcomb then pending between the taxpayers which action was numbered 229369.

The final decree was only obtained on or about August 18, 1952.

The taxpayers in the mistaken belief that they could not file a joint return after the interlocutory decree had been entered filed separate returns for the calendar year 1951.

The husband, William F. Holcomb, in his separate return for the year 1951 reported a net income of $53,887.39, paying thereon a tax of $29,661.54. Subsequently, upon the audit of the husband's return, his net income for the year 1951 was found to be $68,880.59 and an additional tax of $11,493.32 was assessed. William F. Holcomb consented to said assessment and on or about May 17, 1954, paid said amount of $11,493.32 plus the interest due. The total tax paid by the husband for the year 1951 amounts, therefore, to.....$41,154.86

The wife, Idris M. Holcomb, in her separate return reported a net income of $1,553.31, paying thereon a tax of.. 72.08

The total tax paid by husband and wife in their separate returns for the year 1951 amounts to $41,226.94
(See enclosed Schedule)

Taxpayers' view that they could not file a joint return for the year 1951 was erroneous. Under California law, an interlocutory decree does not terminate the matrimonial status of the parties and they could therefore file a joint return for the year 1951. (Marriner S. Eccles, 19 T.C. 1049, aff'd C.C.A. 4th,

Dec. 9, 1953; Alice Humphreys Evans, 19 T.C. 1102, aff'd C.C.A. 10th, Mar. 13, 1954).

Taxpayers now file a joint return for the year 1951 under Sec. 51(g) of the Internal Revenue Code, which joint return is enclosed herewith showing a total tax liability of $32,933.24. The difference between this sum and the sum of $41,226.94, which the taxpayers have paid with their separate returns, is the sum of $8,293.70, the refund of which is claimed herewith.

SCHEDULE

William F. and Idris M. Holcomb
Income and Deductions for 1951

Income	Wife's Separate Return	Husband's Separate Return	Total
Dividends	$ 693.25	$ 674.88	$ 1,368.13
Interest	2,396.06	2,156.52	4,552.58
Rents and Royalties		2,606.63	2,606.63
Net Gain from Sale of Capital Assets	226.60		226.60
Partnership Income		66,565.22	66,565.22
Adjusted Gross Income	$ 3,315.91	$72,003.25	$75,319.16
Deductions:			
Contributions	$ 140.00	$ 300.00	$ 440.00
Taxes	951.59	2,734.86	3,686.45
Medical Expenses*			
Misc. Deductions		87.80	87.80
Total Deductions	$ 1,091.59	$ 3,122.66	$ 4,214.25
Net Income			$71,104.91

*The wife deducted $671.01 on her separate return for medical expenses, which deduction is not being considered in the joint return.

1 1040
Department
enue Service

U. S. ..DIVIDUAL INCOME TAX RETUR..

FOR CALENDAR YEAR 1951

1951

or taxable year beginning , 195 , and ending , 195

Do not write in these spaces

Serial No.

(Cashier's Stamp)

Name WILLIAM F. and IDRIS M. HOLCOMB
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS c/o BRONSON, BRONSON & McKINNON
(PLEASE PRINT. Street and number or rural route)

220 BUSH STREET, SAN FRANCISCO 4, CALIF.
(City, town, or post office) (Postal zone number) (State)

Social Security No. Occupation

List your name. If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.

Check below if at the end of your taxable year you or your wife were—

On lines A and B below—
If neither 65 nor blind write the figure 1
If either 65 or blind write the figure 2
If both 65 and blind write the figure 3

A. WILLIAM F. HOLCOMB (Your name)	65 or over ☐	Blind ☐	Number of exemptions for you	1
B. IDRIS M. HOLCOMB (Your wife's name—do not list if exemption is claimed on another return)	65 or over ☐	Blind ☐	Number of her (or his) exemptions	1

C. List names of your children (including stepchildren and *legally* adopted children) with 1951 gross incomes of less than $600 who received more than one-half of their support from you in 1951. See Instructions.

Name—and address if different from yours

Enter number of children listed

D. Enter number of exemptions claimed for close relatives listed in Schedule J on page 2 ... 1

E. Enter total number of exemptions claimed in A to D above ... 3

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1951, *before payroll deductions*. Persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Income Tax Withheld	Total Wages
		$	$
	Enter totals	$	$

If you received dividends, interest, or any other income, give details on page 2 and enter the total here ...

Add income shown in items 2 and 3, and enter the total here ... $ 75,319 16

YOUR INCOME WAS LESS THAN $5,000.—Use the tax table on page 4 *unless you itemize deductions*. The table allows about 10 percent of your income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.
INCOME WAS $5,000 OR MORE.—Compute tax on page 3. Use standard deduction or itemize deductions, whichever to your advantage.

(A) Enter your tax from table on page 4, or from line 13, page 3 $
(B) Enter your self-employment tax from line 31, separate Schedule C
Enter total here → $ 32,933 24

How much have you paid on your 1951 income tax?
(A) By tax withheld (in item 2, above). Attach Original Forms W-2 $
(B) By payments on 1951 ~~Declaration of Estimated Tax (include~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ SEPARATE RETURNS 41,226 94
Enter total here → 41,226 94

If your tax (item 5) is larger than payments (item 6), enter *balance of tax due* here. This balance must be paid in full with return ... $

If your payments (item 6) are larger than your tax (item 5), enter the *overpayment* here $ 8,293 70

Enter amount of item 8 you want $8,293.70 (Refunded) $ (Credited on 1952 estimated tax)

...ve any prior year Federal tax for which you have been billed? (Yes or No) no Is your wife (or husband) ... a separate return for 1951? (Yes or No) ...... If "yes," write her (or his) name ......
...e filed a return for a prior year, state latest year 1950 Where filed? FIRST CALIFORNIA DISTRICT
... Collector's office did you pay amount claimed in item 6 (B), above? .

...lare under the penalties of perjury that this return (including any accompanying schedules and statements) has ...ined by me and to the best of my knowledge and belief is a true, correct, and complete return.

...x Weingarten 6/17/54
...f person, other than taxpayer, preparing this return) (Date)

...N, BRONSON & McKINNON
(Name of firm or employer, if any)

William F. Holcomb by
Max Weingarten, Attorney in Fact 6/22/54
(Signature of taxpayer) (Date)

s/ Mrs. Idris M. Holcomb 6/19/54
(Signature of taxpayer's wife or husband if this is a joint return) (Date)

...split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN. 16—65304-1

Schedule A.—INCOME FROM DIVIDENDS

Name of corporation declaring dividend	Amount	Name of corporation declaring dividend	Amount	
SCHEDULE A				
			Enter total here →	1,368 13

Schedule B.—INCOME FROM INTEREST

Name of payer	Amount	Name of payer	Amount	
SCHEDULE A				
			Enter total here →	4,552 58

Schedule C Summary.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION, FARMING, AND PARTNERSHIP

Business profit (or loss) from separate Schedule C, line 24		
Farm profit (or loss) from separate schedule, Form 1040F		
Partnership, etc., profit (or loss) from Form 1065, Schedule J, Column 10		
Total of lines 1, 2, 3		
Less: Net operating loss deduction (attach statement)		
Net profit (or loss) (line 4 less line 5)		66,565 22

Schedule D.—NET GAIN OR LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

Net sale or exchange of capital assets (from separate Schedule D)	226 60
Net sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM ANNUITIES OR PENSIONS

Cost of annuity (amount you paid)	$	4. Amount received this year	$
Amount received tax-free in past years		5. Excess of line 4 over line 3	
Remainder of cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater but not more than line 4	

Schedule F.—INCOME FROM RENTS AND ROYALTIES

Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule H)	4. Repairs (explain in Schedule I)	5. Other expenses (itemize in Schedule I)	
Totals	$ 5,986 38	$ 1,690 00	$ 7 59	$ 1,682 16	
Net profit (or loss) (column 2 less sum of columns 3, 4, and 5)					2,606 63

Schedule G.—INCOME FROM ESTATES AND TRUSTS AND OTHER SOURCES

Estate or trust (Name) (Address)		
Other sources (state nature)		
	Enter total here →	
Total income (or loss) from above sources (Enter here and as item 3, page 1)		$ 75,319 16

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SEPARATE SCHEDULE C AND SCHEDULE F

Property (if buildings, state material of construction). Exclude land and other nondepreciable property	1. Date acquired	2. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Remaining cost or other basis to be recovered	6. Life used in accumulating depreciation	7. Estimated life from beginning of year	8. Depreciation allowable this year
							1,690 00

Schedule I.—EXPLANATION OF LINES 6, 17, AND 20, SEPARATE SCHEDULE C AND COLUMNS 4 AND 5 OF SCHEDULE F

Explanation	Amount	Line or Column No.	Explanation	Amount
	7 59			1,682 16

Schedule J.—EXEMPTIONS FOR CLOSE RELATIVES—(See Instructions)

Name of dependent relative. Also give address if different from yours	2. Relationship	3. Did dependent during 1951— (a) Have gross income of $600 or more?	(b) Reside in your home?	(c) Receive entire support from you?	4. If answer to either 3(b) or 3(c) is "No" enter amount spent for dependent's support in 1951 by— You (and your wife if this is a joint return)	Others, and by dependent from own funds
E. DUNN	MOTHER	NO	YES	YES	$	$

Enter here and as item 1D, page 1, the number of close relatives claimed above

GPO 16—65304-1

DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW— Page 3

Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

Describe deductions and state to whom paid. If more space is needed, attach additional sheets.

SEE SCHEDULE A	$	
Allowable Contributions (not in excess of 15 percent of item 4, page 1)		$ 440 00
	$	
Total Interest		
SEE SCHEDULE A	$	
Total Taxes		3,686 45
	$	
Total Allowable Losses (not compensated by insurance or otherwise)		
	$	
Net Expenses (not compensated by insurance or otherwise)	$	
Enter 5 percent of item 4, page 1, and subtract from Net Expenses		
Allowable Medical and Dental Expenses. See Instructions for limitation		
	$	
Accounting fee	75 00	
Deposit Box for Securities	12 80	
Total Miscellaneous Deductions		87 80
Total Deductions		$ 4,214 25

TAX COMPUTATION FOR CALENDAR YEAR 1951 (For Other Taxable Years Attach Form 1040FY)

amount shown in item 4, page 1. This is your Adjusted Gross Income		$ 75,319 16
uctions are itemized above, enter total of such deductions. If deductions are not itemized		
line 1, above, is $5,000 or more: (*a*) married persons filing separately enter $500, (*b*) all		4,214 25
rs enter 10 percent of line 1, but not more than $1,000		
ct line 2 from line 1. Enter the difference here. This is your Net Income		$ 71,104 91
ply $600 by total number of exemptions claimed in item 1E, page 1. Enter total here		1,800 00
ct line 4 from line 3. Enter difference here. (If line 1 includes partially tax-exempt		
rest, see instructions)		$ 69,304 91
is not more than $2,000—Enter 20.4 percent of amount on line 5 and disregard lines 7, 8, and 9		
s is your normal tax and surtax		$
is more than $2,000 and you are a single person or a married person filing separately—Use tax rates on last page		
nstructions to figure tax on amount on line 5. This is your normal tax and surtax		$
is more than $2,000 and you are filing a joint return—		
er here one-half of the amount of line 5	$34,652.45	
tax rates on last page of instructions to figure tax on amount on line 8 (*a*)	16,466.62	
ltiply amount on line 8 (*b*) by 2. This is your normal tax and surtax		$ 32,933 24
rnative tax computation is made, enter here tax on back of separate Schedule D		$
10, 11, and 12, and copy on line 13 the same figure you entered on line 6, 7, 8 (*c*), or 9, unless you used itemized deductions		
here any income tax payments to a foreign country or U. S. possession	$	
ach Form 1116)		
here any income tax paid at source on tax-free covenant bond interest		
he figures on lines 10 and 11 and enter the total here		$
ct line 12 from line 6, 7, 8 (*c*), or 9. Enter difference here and as item 5 (A), page 1.		
is your tax		$ 32,933 24

16—6-54-1

SCHEDULE "A"

William F. and Idris M. Holcomb

Calendar Year 1951

Dividends

Husband:		
Affiliated Fund	$ 209.88	
Portland G & E	90.00	
Central Bldg & Loan	175.00	
Cal. Water	200.00	$ 674.88
Wife:		
Central Bldg. & Loan	175.00	
Cal. Water	134.05	
Cal. Water & Tel.	60.00	
Toledo Edison	77.00	
Affiliated Fund	247.20	693.25
Total Dividends		$ 1,368.13

Interest Income

Husband:		
Central Bldg. & Loan	$ 612.88	
Guaranty Bldg. & Loan	165.13	
Fidelity Bldg. & Loan	485.16	
First Fed. Bldg.	625.84	
Matt Laurence	267.51	2,156.52
Wife:		
San Francisco Bank	318.72	
Oakland Fed. Sav. & Loan	298.10	
American Trust Co.	294.81	
Matt Laurence	1,484.43	2,396.06
Total Interest Income		$ 4,552.58

Contributions

American Red Cross	$ 170.00	
St. Paul's Epis. Church, Oakland	100.00	
Community Chest	50.00	
Disabled Veterans, Cancer Fund, Infantile Paralysis, Heart Fund, etc.	110.00	
Misc. small donations	10.00	
Total Contributions		$ 440.00

Taxes

Real estate and personal property taxes	$ 151.40	
State and City sales tax	275.00	
State income tax	2,343.46	
Taxes—City of Oakland	646.85	
Taxes—City of Piedmont	199.95	
Car License	36.00	
State Gasoline Tax	28.00	
Tax on Oregon lot	5.79	
Total Taxes		$ 3,686.45

Note: For more detailed information on any item on this joint tax return, see the separate returns previously filed by husband and wife for the year 1951.

Exhibit "A"

U. S. Treasury Department
Internal Revenue Service
100 McAlister Street
San Francisco 2, California

Jan. 10, 1955.

Chief, Audit Div'n.
A:R:30-D Rm. 1403A

Claim(s) for Refund

Form No. 843, Year 1951, Amount $8,293.70.

William F. and Idris M. Holcomb,
220 Bush Street,
c/o Branson, Bronson & McKinnon,
San Francisco 4, California.

Dear Mr. and Mrs. Holcomb:

The attached report, which takes into consideration the claim(s) for refund designated above, has been carefully reviewed by this office and discloses no grounds for reduction in tax liability as a result of the examination of your income tax return for the year above mentioned.

If you do not accept the findings, you may, within 30 days from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

Important: It is essential that communications transmitting protests or agreements relative to this letter be addressed to the District Director of Internal Revenue, Audit Division, 100 McAlister Street, San Francisco 2, California.

Very truly yours,

GLEN T. JAMISON,
District Director of Internal
Revenue.

By /s/ HENRY J. BRUL,
Chief, Audit Division.

Enclosures:
Report of Examination
Receipt Form
SF #72

Exhibit "B"

Preliminary Statement

Name of Taxpayer: William F. and Idris M. Holcomb.

Examining Officer: L. Rubin.

Date of Report: Nov. 15, 1954.

Summary of Proposed Adjustments

Year Ended: Dec. 31, 1954.

Income Tax:
Deficiency: No Change.
Overassessment: [Blank.]

Agreement Secured: No.

Name of person with whom findings discussed: Mr. Weingarten, attorney-in-fact of taxpayer.

Principal causes of changes, and other information:

Claim for refund of 1951 income taxes paid, dated June 17, 1954, is disallowed in full. Basis of claim was made on two tax court cases:

Marriner S. Eccles, 19 T.C. 1049
Alice Humphreys Evans, 19 T.C. 1102

The Commissioner of Internal Revenue does not acquiesce in either of the above-named decisions. See page 8, Cumulative Bulletin 1953-2.

Under provisions of I.T. 3942, CB 1949-1, Page 69, for purposes of filing a joint return (Section 51(b) of the 1939 Internal Revenue Code), the parties named in an interlocutory decree of divorce in the State of California are not considered married.

Mr. Weingarten, acting for Dr. and Mrs. Holcomb under power of attorney, in a telephone conversation on Nov. 12, 1954, has waived the privilege of informal conference with Group Supervisor.

[Endorsed]: Filed Feb. 7, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now the United States of America, by its attorney, Lloyd H. Burke, United States Attorney for the Northern District of California, and for its answer to the complaint of the plaintiffs, admits, denies and alleges as follows:

1. Admits the allegations of paragraph I, except it is denied that the plaintiffs in fact made an overpayment of internal revenue taxes for the year in question.

2. Admits the allegations of paragraph II.

3. Denies the allegations of paragraph III, except it is admitted that the plaintiffs' claim is for the recovery of the amount stated.

4. With respect to the allegations contained in the various subparagraphs of paragraph IV of the complaint, the defendant admits, denies and alleges as follows:

(a) Denied.

(b) Admits the allegations pertaining to the separate return of plaintiff William F. Holcomb for the year in question, but defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to the separate return filed by the plaintiff Idris M. Holcomb for the year in question.

(c) Admitted, except it is denied that plaintiffs made any overpayment of their income tax for the year in question.

(d) Admitted, except defendant denies the implication that the sum in question was erroneously or excessively collected from plaintiffs. Defendant further denies the allegations and statements contained in Exhibit "A", attached to the complaint, admitting, however, that Exhibit "A" is a fair copy of the claim for refund filed by plaintiffs, as alleged.

(e) Admitted.

5. Denies the allegations of paragraph V.

6. Denies the allegations of paragraph VI.

Wherefore, defendant demands judgment in its favor, dismissing the complaint and awarding it all lawful costs and disbursements of this action.

LLOYD H. BURKE,
United States Attorney,

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for Defendant.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

STIPULATED FACTS

It is hereby stipulated and agreed by and between all the parties in the above-entitled cause, by their respective attorneys that the following facts are correct, without prejudice to the right of any party to object to the relevancy or materiality of such facts and subject to the right of any party to introduce additional evidence not inconsistent herewith:

1. The sole issue involved is whether under the facts of this case, plaintiffs were entitled to file a joint return for the year 1951 pursuant to the provisions of Section 51 of the Internal Revenue Code of 1939.

2. William F. Holcomb and Idris M. Holcomb, the plaintiffs herein, were married on or about December 1, 1923, and have lived together as husband and wife until approximately June 28, 1950.

3. On or about June 28, 1950, said William F. Holcomb and Idris M. Holcomb separated and have been living separate and apart ever since.

4. On or about June 28, 1950, William F. Holcomb and Idris M. Holcomb entered into and executed a property settlement agreement, settling their respective rights in and to the community property and in and to the separate property of each. Said agreement is set forth in full in the Findings of Facts and Conclusions of Law entered in the divorce action described in the next paragraph. A true copy of said Findings of Facts and Conclusions of Law is attached hereto as Exhibit 1.

5. On or about September 28, 1950, Idris M. Holcomb brought an action for divorce from William F. Holcomb in the Superior Court of the State of California, in and for the County of Alameda, which action is numbered 229369, alleging extreme cruelty as ground for divorce. In said action Idris M. Holcomb also alleged that her signature to the property settlement of June 28, 1950, had been obtained by William F. Holcomb by threats, undue influence, and fraudulent representations and said Idris M. Holcomb asked the Court to declare said agreement invalid. All these allegations were denied by William F. Holcomb in his answer and cross-complaint to the complaint for divorce.

6. On or about October 4, 1950, Idris M. Holcomb filed a petition with said Superior Court, asking for an award of alimony pendente lite, and on

or about October 24, 1950, said Court signed an order, ordering said William F. Holcomb to pay to Idris M. Holcomb $550.00 per month as alimony pendente lite, beginning with November 1, 1950.

7. During the calendar year 1951 and prior to the granting of the interlocutory decree of divorce, said William F. Holcomb paid to Idris M. Holcomb the sum of $4,840.00 as alimony pendente lite pursuant to said Court decree and treated this amount as a deduction on his Federal income tax return for the year 1951. Idris M. Holcomb did not include said sum of $4,840.00 as part of her gross income in her Federal income tax return for 1951.

8. On or about August 13, 1951, the Court concluded after a lengthy trial that Idris M. Holcomb was entitled to a decree of divorce and granted her an interlocutory decree of divorce. Said decree also adjudged that the property settlement date June 28, 1950, was valid and binding. A correct copy of said interlocutory decree of divorce is attached hereto as Exhibit 2. Neither alimony, nor support or maintenance, nor any payment whatsoever was awarded by said decree to Idris M. Holcomb and no such payments were made by William F. Holcomb after August 13, 1951.

9. On August 18, 1952, the said Superior Court entered a final judgment of divorce, correct copy of which is attached hereto as Exhibit 3.

10. Plaintiffs filed separate returns for the calendar year 1951. Plaintiff William F. Holcomb in

his separate return for said year reported a net income of $53,887.39 and paid thereon an income tax to defendant of $29,661.54. Subsequently, upon the audit of William F. Holcomb's separate return, his net income for the calendar year 1951 was determined to be $68,880.59 and an additional tax of $11,493.32 was assessed and on or about May 16, 1954, said plaintiff paid said additional tax together with interest thereon. Plaintiff Idris M. Holcomb in her separate return for the calendar year 1951 reported a net income of $1,553.31 and paid to defendant an income tax of $72.08, making a total income tax paid to the defendant by both plaintiffs for the calendar year 1951 the sum of $41,226.94.

11. One of the items which caused the increase of the taxable income of William F. Holcomb for 1951 from $53,887.39 to $68,880.59 was the disallowance of the deduction in the amount of $4,840.00 paid by William F. Holcomb as alimony pendente lite to Idris M. Holcomb during 1951.

12. On or about June 23, 1954, plaintiffs filed a joint return for the year 1951 showing a total income tax liability of $32,933.24. A true copy of said return is attached to the complaint as part of Exhibit A of said complaint. Prior to filing said joint return plaintiffs paid all amounts previously assessed against them as income tax for the calendar year 1951.

13. Concurrently, with the filing of said joint re-

turn and within the period within which such claims could be legally filed under Section 322 of the Internal Revenue Code then in force, plaintiffs also filed with the Director of Internal Revenue in the City of San Francisco, State of California, a claim for refund for $8,293.70, a true copy of which is attached to the complaint as part of Exhibit A of said complaint.

14. In the event judgment is ordered in favor of plaintiffs, or either of them, the parties shall agree upon the amount of the judgment and in the absence of such agreement, any party on notice may introduce evidence as to the amount of such judgment.

Dated this 6th day of July, 1955.

/s/ ROY A. BRONSON,

/s/ MAX WEINGARTEN,

BRONSON, BRONSON & McKINNON,
Attorneys for Plaintiffs.

LLOYD A. BURKE,
United States Attorney,

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for Defendant.

Exhibit 1

In the Superior Court of the State of California, in and for the County of Alameda

No. 229369 Dept. 11

IDRIS M. HOLCOMB,

Plaintiff,

vs.

WILLIAM F. HOLCOMB,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 17th day of April 1, 1951, before the above-entitled Court, Department No. 11 thereof, Honorable Cecil Mosbacher, Judge, presiding, sitting without a jury, plaintiff appearing by her attorneys, Myron Harris, Esq., and R. J. Darter, Esq., and defendant appearing by his attorneys, Messrs. Ricksen, Freeman & Johnson and Messrs. Bronson, Bronson & McKinnon; and the trial of said action proceeded on said day and succeeding days upon the issues presented by the complaint and supplemental complaint and the answers thereto, defendant's cross-complaint having been dismissed in open Court; and the Court having heard the evidence introduced by and on behalf of the respective parties and the arguments of counsel, and the cause having been submitted to the Court for its decision on the 25th day of April, 1951, and the Court being now fully advised in the premises:

Comes now the Court and makes and files its findings of fact and conclusions of law, as follows, to wit:

Findings of Fact

I.

Plaintiff and defendant intermarried on the first day of December, 1923, in the City of New York, State of New York, and ever since have been and now are husband and wife, respectively.

II.

Plaintiff and defendant separated on the 28th day of June, 1950, and ever since have been and now are living separate and apart.

III.

Plaintiff was at the time of the commencement of this action, and for more than one year continuously next prior thereto, a resident of the County of Alameda, State of California.

IV.

The allegations contained in paragraph VII of the complaint and paragraph II of the supplemental complaint herein are true.

V.

On the 28th day of June, 1950, plaintiff and defendant, as a result of disputes and differences and a long period of domestic infelicities, were about to enter into an immediate separation, and on said date they entered into and executed a property settlement agreement (in two counterparts) settling and disposing of the rights of each in and to the community property of the parties and in and to the

separate property of each, which said agreement is in words and figures as follows, to wit:

"Property Settlement Agreement

"This agreement, made and executed in duplicate this 28th day of June, 1950, by and between Idris M. Holcomb, also known as I. M. Holcomb, Party of the First Part, hereinafter referred to as the wife, and William F. Holcomb, also known as W. F. Holcomb, Party of the Second Part, hereinafter referred to as the husband, both residents of the City of Oakland, County of Alameda, State of California.

Witnesseth:

"Whereas, the parties hereto were lawfully married on or about the 1st day of December, 1923, at New York City, New York, and ever since have been and now are husband and wife; and

"Whereas, in consequence of disputes and unhappy differences, the parties separated on or about June 13, 1950, and now are living separate and apart, and since their said separation have agreed and now intend to live separate and apart during their natural lives; and

"Whereas, the parties during their marriage have accumulated and now own the following community property, which each of them values at the sum or amount hereinafter set out opposite the respective piece or article of property, and where there is no value set forth after or opposite any of the below-listed bank and building and loan associations accounts, the value thereof shall and it is

hereby agreed to be the amount of cash therein as of the date of the signing of this agreement, and where there is no value set forth after or opposite any of the the below-listed shares of corporation stock, the value thereof shall and it is hereby agreed to be the market value thereof at the end of the day upon which this agreement is signed by these parties:

(a) House and lot located at and known and numbered as 305 Vernon Street, Oakland, California, worth approximately $22,500.00;

(b) House and lot located at and known and numbered as 572 Boulevard Way, Piedmont, California, worth approximately $10,000.00;

(c) Life insurance issued upon Second Party's life, wherein First Party is the beneficiary thereunder, in the following life insurance companies or associations, and in the following amounts:

A. U. S. Government $10,000.00
B. Travelers Insurance Company ..$10,000.00
C. Navy Mutual Aid Association...$ 7,500.00
D. Equitable Life Insurance Co...$ 5,000.00;

(d) Buildings and lot located at and known and numbered as 2930 and 2938 Webster Street, Oakland, California, of the approximate value of $30,000.00;

(e) An auxiliary schooner, known and registered as the Landfall II, worth approximately $10,500.00;

(f) Bank and savings accounts in the following banks and savings and loan associations:

A. Central Building and Loan Association of Alameda, California,

B. San Francisco Bank of San Francisco and Oakland, California,

C. American Trust Company, Oakland, California,

D. Fidelity Guaranty Building and Loan Association of Berkeley, California,

E. Guaranty Building and Loan Association of Oakland, California,

F. Oakland Federal Building and Loan Association of Oakland, California, and

G. First Federal Savings and Loan Association of San Diego, California;

(g) Shares of corporation stock in the following corporations and in the following number of shares:

A. 100 shares of Portland General Electric Company,

B. 20 shares of Central Building and Loan Association,

C. 2,061 shares of Affiliated Fund,

D. 100 shares of California Water Service,

E. 42 shares of Monarch Royalty Company, and

F. 1,000 shares of Continental Mines;

(h) Promissory notes, loans, mortgages, or deeds

of trust in the following amounts owed by the following persons to either or both of these parties:

A. Loan to Matt Laurence in the sum of $35,000.00,

B. Loan to Matt Laurence in the sum of $10,000.00,

C. Loan to J. Pierce Rex in the sum of $10,000.00;

(i) Miscellaneous U. S. Government bonds in the approximate sum of $10,200.00, the maturity date thereof being due at various times between 1951 and 1957;

(j) Two automobiles (a 1948 Chrysler sedan and a 1949 Chrysler sedan) the value of which shall be considered by these parties to be the standard California "Blue Book" value of the same as of the date of the signing of this agreement;

(k) Possible other miscellaneous community property of these parties, which the parties hereto do not now recall, but which, if discovered or later recalled, shall be valued by these parties upon a basis agreeable to both of them, and the same shall in no way set aside or change this agreement; for these parties hereby agree that any such hereafter discovered community property shall be equally divided by and between them; and

"Whereas, it is the mutual wish and desire of said parties that a full and final adjustment of all of their property rights, interests, and claims be had, settled, and determined by said parties in this Agreement (this agreement is not merely a separa-

tion agreement) and this Agreement is a full, final, and unconditional agreement forever fixing, settling, defining, determining, and ending the property relations of each party hereto with the other;

"Now, Therefore, it is agreed that in consideration of the mutual promises, agreements, and covenants contained herein, it is covenanted, agreed, and promised by each party hereto, to and with the other party hereto, as follows:

"That all of the aforementioned and any other community property of these parties shall be equally divided by and between them, upon a dollar-value basis; so that each will receive an equal share thereof; and that each of them shall receive certain specific pieces of said property and the value of the same to be used in computing his or her remaining share of said community property shall be the same as hereinabove set forth; and

"In consideration of the premises, First Party hereby grants, conveys, transfers, sets over and delivers to Second Party as and for his own, sole, absolute, separate, and independent property all of the real and personal property mentioned, listed, and set forth in previous paragraphs (d) and (e) hereof; and Second Party in consideration of the premises hereby grants, conveys, transfers, sets over and delivers to First Party as and for her own, sole, absolute, separate, and independent property all of the real and personal property mentioned, listed, and set forth in previous paragraphs (a),

(b), and (c), including all of said life insurance; and the remaining community property of these parties shall be divided between them as herein agreed by them; so that the value of the total community property received by each hereunder shall be equal in dollar-value after the distribution agreed upon herein has been accomplished.

"Each party hereto shall retain as his or her own, sole, and separate property all of his or her separate property now in his or her possession, which either party had at the time of marriage or subsequently inherited and the same is as follows and shall not be divided between these parties:

First Party:

One $1,000.00 bond of the Parish of Ouichita, Louisiana, due in 1956;

Second Party:

Twenty acres of farming land located in San Diego County, California, and his interest in the estate of Second Party's father, S. F. Holcomb, Jr., deceased.

"It is further agreed between these parties, husband and wife, as follows:

"First: That this agreement is voluntarily and freely entered into by both parties for the purpose of forever settling and adjusting the property rights of the parties hereto as the same may now or hereafter exist in regard to each other; and that, while

this agreement has not been entered into as an inducement to either party to institute divorce proceedings, if divorce proceedings are subsequently instituted by either party hereto or are now pending between them, it is agreed by these parties that their property rights, shall be determined and adjudged in any divorce or separation proceedings in accordance with the terms of this agreement.

"Second: That, except as herein specified, each party hereto is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all liabilities, debts, or obligations of any kind or character incurred by the other from and after this date. Further, the wife hereby represents and warrants that she has not incurred any debts, obligations, or liabilities for which the husband is now, or may be or hereafter become, liable or responsible, other than those debts and liabilities about which the husband now has knowledge. If, under any circumstances, notwithstanding this agreement, said Second Party shall ever be called upon or obligated to pay any of such debts, obligations, liabilities or special charges incurred by First Party, other than those which Second Party now knows about, then, First Party hereby agrees that she will immediately, after receiving notice from Second Party to that effect, pay and reimburse Second Party for said sum or sums so spent by Second Party to pay obligations incurred by First Party; and if First Party

fails to reimburse Second Party as herein agreed, Second Party may deduct said sums from any remaining amounts due First Party hereunder from Second Party.

"Third: That any and all property acquired by either of the parties hereto from and after the date hereof, shall be the sole and separate property of the one so acquiring same, and each of said parties hereby respectively grants to the other all such future acquisitions of newly acquired property or property distributed hereunder as the sole and separate property of the one so acquiring the same.

"Fourth: That each of said parties shall have an immediate right to dispose of or bequeath by Will his or her respective interests in and to any and all property belonging to him or her from and after the date hereof, and that said right shall extend to all of the aforementioned future acquisitions of property as well as to all property set over to either of the parties hereto under this agreement.

"Fifth: That the said parties hereto each hereby waive any and all rights to the estate of the other left at his or her death and forever quitclaim any and all right to share in the same of the other, by the laws of succession or otherwise, and said parties hereby release one to the other all right to be administrator or administratrix or executor or executrix of the estate of the other and hereby release and waive all right to inherit under any Will of the other and each of the said parties hereby waive

any and all right of homestead in the real property of the other, and said parties hereby waive any and all right to the estate or any interest in the estate of the other for family allowance, by way of inheritance or otherwise, and from the date of this agreement to the end of the world said waiver of the other in the estate of the other shall from the date of this agreement be effective and they shall have all the rights of single persons and maintain the same relations of such toward each other.

"Sixth: That the wife does and shall accept the provisions herein made for her in full satisfaction of her right to the community property of the respective parties hereto; and the wife hereby covenants and agrees so long as the husband shall duly keep and perform the covenants, agreements, and conditions to be kept and performed by him hereunder, she will not at any time hereafter contract any debts, charge, or liability whatsoever, for which the husband or his property or his estate shall or may be or become liable or answerable and the wife hereby covenants and agrees that she will at all times hereafter keep the husband free and harmless from any and all debts or liabilities which may hereafter be incurred by her.

"Seventh: That it shall be lawful for the wife at all times hereafter to live separate and apart from the husband and free from his marital control and authority, as if she were sole and unmarried, and free from any control, restraint, or interference, direct or indirect by the husband; and it shall be

lawful for the husband, at all times hereafter, to live separate and apart from the wife, at such place or places as he may from time to time choose or deem fit.

"Eighth: That neither of the parties shall molest or annoy the other, or compel or endeavor to compel the other to cohabit or to dwell with him or her, as the case may be, by any legal or other proceedings, for restoration of conjugal rights or otherwise. Neither party hereto shall against the wish and desire of the other call upon or visit the other.

"Ninth: That the parties shall, at any time or times hereafter, make, execute, and deliver any and all such further or other instruments, papers, or things as the other of the said parties shall require for the purpose of giving full effect to these presents and to the covenants, provisions, and agreements hereof; and any other community property of the parties hereto (other than that herein already specifically mentioned) which is hereafter discovered or which is presently in the possession of either party shall be equally divided by and between the parties hereto in accordance with the terms hereof, save and except it is agreed by the parties hereto that each will hand to the other any personal belongings of the other which are now in the possession of either party hereto.

"Tenth: That each party hereto hereby agrees in consideration of the mutual covenants herein made to pay without demand upon the other there-

for any and all attorney fees and/or Court costs incurred by him or her in any divorce or separation action or action for modification thereof, now pending or hereinafter instituted by him or her.

"Eleventh: That this agreement is not and is not to be construed to be an agreement for divorce, nor founded upon consideration of either party withdrawing from, or initiating, or abandoning or doing anything to facilitate the procuring of a divorce by either party hereto.

"Twelfth: That said parties are now living separate and apart, and if, for any cause, said parties shall cease to live separate and apart, the provisions and conditions of this agreement as to the property rights of the parties hereto shall not thereby be in anywise suspended, changed, modified, or altered, but the same shall remain in all respects in full force and effect, unless changed or modified by subsequent written agreement entered into between the parties hereto.

"Thirteenth: That it is mutually understood and agreed by the parties hereto that neither of the parties hereto shall hereafter be liable for the support, care, or maintenance of the other in whole or in part, and that each of the parties hereto shall hereafter provide and pay for his, or her, own care, maintenance and support. The parties hereto mutually agree that they will not, and that neither of them will, at any time, claim, apply for, ask or receive as against the other any order or judgment of

any Court for alimony, support, maintenance, costs or counsel fees, and that if, perchance, any Court shall ever grant or award unto either party any sums of money as and for either temporary or permanent support or maintenance and/or attorney's fees and/or Court costs, then and immediately thereupon that party who so received such award shall immediately execute and deliver over unto the other party a formal written waiver and disclaimer to any such sums of money for any such purpose or purposes, and said waiver or disclaimer may be filed in the then pending action between the parties hereto and used as a bar for the payment of any such sums of money for any such purpose or purposes.

"Fourteenth: That each party hereto expressly agrees and states that this agreement contains all of the terms, covenants and conditions agreed upon by the parties hereto and that there are no other or further promises or conditions or terms or covenants made by either party hereto as an inducement to the other to enter into this agreement.

"Fifteenth: That Second Party shall promptly pay the 1950 United States and State of California income taxes of these parties in regard to the income received from said property and Second Party shall take the community or marital deduction allowed by the United States and State of California when computing said taxes.

"Sixteenth: That each party to this agreement hereby solemnly and specifically avers that the

aforegoing agreement has been read, discussed, and agreed to by each of them, and each of said parties avers that he or she has received independent and separate advice in regard thereto, and that each party understands all of the provisions hereof, and that this agreement sets forth all of the community property of the parties hereto as fully and completely as each of them is now able to recall, and this agreement has been entered into without undue influence or fraud or coercion or misrepresentation or for any cause except as herein specified.

"In Witness Whereof, the parties hereto have hereunto, in duplicate, set their hands the day and year first above written.

/s/ IDRIS M. HOLCOMB,
Also Known as I. M. Holcomb, First Party.

/s/ WILLIAM F. HOLCOMB,
Also Known as W. F. Holcomb, Second Party.

"There will be an additional payment by Dr. W. F. Holcomb to Mrs. Idris M. Holcomb of $25,000 (twenty-five thousand dollars) when the above agreement is fulfilled.

/s/ W. F. HOLCOMB."

"State of California
"County of Alameda—ss.

"On this 28th day of June, 1950, before me, the undersigned, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and qualified, personally appeared Idris M. Holcomb, personally known to me to be the person described in and the person whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

"In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the said County of Alameda the day and year in this certificate first above written.

[Seal] /s/ GEO. L. HEWITT,
Notary Public in and for the County of Alameda,
State of California."

"State of California
"County of Alameda—ss.

"On this 28th day of June, 1950, before me, the undersigned, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and qualified, personally appeared William F. Holcomb, personally known to me to be the person described in and the person whose name is subscribed to the within instru-

ment, and he acknowledged to me that he executed the same.

"In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the said County of Alameda the day and year in this certificate first above written.

[Seal] /s/ GEO. L. HEWITT,
Notary Public in and for the County of Alameda, State of California."

All of the foregoing constitutes the property settlement agreement entered into between the parties, but for the purpose of convenience that portion thereof following the signatures of the parties and relating to the payment by defendant to plaintiff of the additional sum of $25,000.000 will hereinafter be referred to as the "addenda."

VI.

At the time of the execution of said agreement no confidential relationship existed between the parties hereto and plaintiff was not subject or susceptible to the influence or domination of defendant.

VII.

Prior to and at the time of the execution of said agreement defendant did not make to plaintiff any false or fraudulent representation, nor did he make any promises other than as set forth in said agreement and the addenda, which said promises he intended to perform, nor did he exercise or use any

fraud, duress, threat, intimidation, menace or undue influence of any kind whatsoever upon plaintiff for the purpose of inducing her to enter into said agreement or at all. Defendant made no statements at or prior to the time of the execution of said agreement to plaintiff with an intent to deceive or mislead plaintiff. Plaintiff was in no way deceived or misled by defendant, nor did she rely upon any statements made by defendant to her at the time of or prior to the execution of said agreement.

VII.

In executing and entering into said property settlement agreement plaintiff was not acting under duress, menace, fear, threat, intimidation or compulsion of any kind whatsoever, nor as a result of any fraud or deception practiced upon her by defendant or with his connivance. Plaintiff was capable of entering into said agreement and her consent thereto was free and voluntary.

IX.

Plaintiff had full knowledge of the community property of the parties and was familiar with the nature and extent of same and of each and all of the particular items comprising the community property of the parties and the amount and value thereof, as well as the separate property of each and of the earnings and income of defendant.

X.

Prior to the execution of said agreement, plaintiff had submitted same to an attorney of her own

choosing, and prior to the signing thereof she had the advice of said attorney and the advice of an independent business advisor of her own choosing.

XI.

That for the purpose of dividing the community property, the plaintiff and defendant fixed the values of certain articles and parcels of said community property and agreed to said values for the purpose of such division pursuant to the terms of said property settlement agreement. Plaintiff and defendant further agreed that certain of the articles and parcels of said community property were to be taken by the plaintiff at the values so fixed and agreed upon, and that certain other articles and parcels were to be taken by the defendant at the values so fixed and agreed upon, all as set forth in said property settlement agreement hereinabove set forth. The remainder of said community property where values were not so fixed and agreed upon was to be taken at the cash value in the case of bank deposits, savings deposits and building and loan deposits, and at market value as of the date of said agreement as to articles other than cash. All of said community property of plaintiff and defendant was thereupon to be equally divided so that after giving credit to each for the values fixed and agreed upon for the specific articles and parcels to be taken by each there would be an equal division of said property on a dollar value basis. Upon such division the defendant agreed by the terms of the addenda to pay to the plaintiff in cash above and

beyond the share of the community property which by the agreement she was to receive, the further and additional sum of $25,000.00. That the agreement on the part of the defendant to pay to plaintiff the additional sum of $25,000.00 was made by him at the express instigation and request of plaintiff.

Plaintiff and defendant in fixing and agreeing to the values of certain of the articles and parcels of said community property did so voluntarily, free from fraud, coercion or misrepresentation and with full knowledge of the values thereof. The agreement of the parties in relation to the values so fixed by them is binding upon each of them.

XII.

Pursuant to the terms and provisions of said property settlement agreement, together with the addenda thereto appended, plaintiff received as and for her separate property the major portion of the community property of the parties. Said agreement is fair, just and equitable in all respects.

XIII.

There is no community property of the parties hereto of which the court may make division by reason of the fact that pursuant to the terms of said property settlement agreement the said parties agreed to the division of all of their community property.

XIV.

Defendant in open court waived any and all right to recover from plaintiff pursuant to the provisions of paragraph Thirteenth of said property settlement agreement any sums of money heretofore paid by him to plaintiff under and pursuant to that certain order entitled, "Order for Payment of Attorney's Fees, Court Costs, Alimony Pendente Lite, and Restraining Order," heretofore given and made by this court in the above-entitled proceeding, which said order is dated October 24, 1950, and signed the 26th day of October, 1950.

XV.

There was no collusion or connivance between the parties nor any understanding promotive of divorce in respect to the institution of this action.

Conclusions of Law

By reason of the foregoing findings of fact, the court makes the following conclusions of law:

I.

Plaintiff is entitled to an interlocutory judgment and decree of divorce on the ground of defendant's extreme cruelty.

II.

The property settlement agreement dated June 28, 1950, between plaintiff and defendant is valid and is binding on the parties hereto and should be approved.

III.

That each party hereto pay his and her own costs.

Let judgment be entered accordingly.

Done in open Court this 13th day of August, 1951.

CECIL MOSBACHER,
Judge of said Superior Court.

Exhibit 2

[Title of Superior Court and Cause.]

No. 229369

INTERLOCUTORY JUDGMENT AND DECREE OF DIVORCE AND JUDGMENT AFFIRMING PROPERTY SETTLEMENT AGREEMENT

The above entitled cause came on regularly for trial on the 17th day of April, 1951, before the above-entitled Court, Department No. 11 thereof, Honorable Cecil Mosbacher, Judge, presiding, sitting without a jury, plaintiff appearing by her attorneys, Myron Harris, Esq., and R. J. Darter, Esq., and defendant appearing by his attorneys, Messrs., Ricksen, Freeman & Johnson and Messrs. Bronson, Bronson & McKinnon; and the trial of said action proceeded on said day and succeeding days upon the issues presented by the complaint and supplemental complaint and the answers thereto, defendant's cross-complaint having been dismissed in open court; and evidence, oral and documentary, having been introduced by and on behalf of the

respective parties and the evidence being closed, the cause was submitted to the Court for consideration and decision on the 25th day of April, 1951.

And now on this 13th day of August, 1951, after due deliberation thereon, the Court has made and entered its Findings of Fact and Conclusions of Law.

Wherefore, by reason of the law and by the findings aforesaid, it is hereby Ordered, Adjudged and Decreed that a divorce should be granted to plaintiff from defendant and said plaintiff is entitled to a divorce from said defendant on the ground of defendant's extreme cruelty.

It is further Ordered, Adjudged and Decreed that the property settlement agreement dated June 28, 1950, between plaintiff and defendant is valid and is binding on the parties, and it is hereby ratified, confirmed and approved.

It is further Ordered, Adjudged and Decreed that each party hereto shall pay his and her own costs of suit incurred herein.

Done in open court this 13th day of August, 1951.

/s/ CECIL MOSBACHER,
Judge of said Superior Court.

Exhibit 3

In the Superior Court of the State of California, in and for the County of Alameda

No. 229369

IDRIA M. HOLCOMB,

Plaintiff,

vs.

WILLIAM F. HOLCOMB,

Defendant.

FINAL JUDGMENT OF DIVORCE

The motion of the defendant for final judgment came on for hearing on this 18th day of August, 1952, upon all the files, papers, proceedings and records in the above-entitled action, from which it appears, and the Court finds, that an interlocutory Judgment of divorce was, on the thirteenth day of August, 1951, entered in said cause in Judgment Book 336, at page 248; that the motion for a new trial was denied and the appeal taken by plaintiff has been dismissed.

Wherefore it is hereby Ordered, Adjudged and Decreed that a divorce be, and it hereby is, granted and that the marriage between the above-named plaintiff and defendant be, and the same is, hereby dissolved, and the said parties are restored to the status of single persons.

Done in open Court this 18th day of August, 1952.

/s/ S. VICTOR WAGLER,
Judge of the Superior Court.

[Endorsed]: Filed Aug. 18, 1952, Superior Court.

[Endorsed]: Filed July 6, 1955, U.S.D.C.

[Title of District Court and Cause.]

MEMORANDUM

Murphy, D. J.

This is an action against the United States of America for the recovery of an alleged overpayment of federal income taxes in the amount of $8,293.70, plus interest. The sole issue involved is whether, under the facts of the case, plaintiffs were entitled to file a joint return for the calendar year 1951 pursuant to the provisions of Section 51 of the Internal Revenue Code of 1939.

The stipulated facts are: the plaintiffs were married on December 1, 1923, and lived together as man and wife until approximately June 28, 1950. On or about the latter date the taxpayers separated by mutual consent and executed a property settlement agreement, which agreement made no provision for alimony or support payments temporary or otherwise. On or about August 13, 1951, Idris M. Holcomb was awarded an interlocutory decree of divorce, incorporating the above mentioned property settlement, by the Superior Court of the State of California, which decree became final on August 18, 1952. Plaintiffs filed separate returns for the calendar year 1951. On June 23, 1954, plaintiffs filed a joint return for 1951 and a claim for a refund of $8,293.70, which was denied.

The determination of this case rests upon the interpretation of Sec. 51(b) 5(B) of the Internal Revenue Code of 1939 which states that "an individ-

ual who is legally separated from his spouse under a decree of divorce or separate maintenance shall not be considered as married" for the purposes of filing a joint return.

Admittedly the parties herein were not divorced in 1951. It is elementary that in California an interlocutory decree of divorce does not destroy the marriage. Brown vs. Brown, 170 Cal. 1, 147 Pac. 1168. Nor were they legally separated by what is commonly known as a decree of separate maintenance. It is pertinent in this connection to stress the fact that the property settlement did not provide for support payments and none in fact were ever received by the wife with the exception of $4.840 worth of alimony pendente lite. Defendant however contends that the section in question also applies to persons who, while still legally married for other purposes, were "legally separated * * * under a decree of divorce." This contention has been made before and has been rejected. The identical issue was raised in Marriner S. Eccles, 19 T.C. 1049, aff'd 208 F.2d 796, 4 Cir., which held that since an interlocutory decree under Utah law did not dissolve the marriage, a joint return was proper. In the case of William G. Ostler vs. Commissioner, Docket No. 52185, T.C. Memo 1955-207, filed 7/25/55, the same result was reached on the same issue under California law.

In view of what seems to be the settled law in this area, the issue in this proceeding is decided in favor of the plaintiffs.

Pursuant to Rule 52(a) this memorandum shall be in lieu of Findings of Fact and Conclusions of law.

Judgment accordingly.

Dated, October 18, 1955.

/s/ THOMAS F. MURPHY,
United States District Judge.

[Endorsed]: Filed October 24, 1955.

In the District Court of the United States for the Northern District of California, Southern Division

No. 34443

WILLIAM F. HOLCOMB and IDRIS M. HOLCOMB,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This cause came on for trial before the Honorable Thos. F. Murphy, United States District Judge, without a jury, upon an agreed Statement of Facts, and the parties having appeared by their respective counsel, and the issues having been duly tried and the court having filed its opinion on the 24th day of

October, 1955, granting judgment as hereinafter provided; now therefore,

It is Hereby Ordered, Adjudged and Decreed that plaintiffs have and recover of defendant the sum of $8,293.70 with interest as provided by section 6611 of the Internal Revenue Code of 1954.

Dated: Nov. 28, 1955.

/s/ THOMAS F. MURPHY,
United States District Judge.

Approved as to form:

LLOYD H. BURKE,
United States Attorney,
Attorneys for Defendant.

By /s/ LYNN J. GILLARD,
Asst. U.S.A.

Entered in Civil Docket Dec. 5, 1955.

[Endorsed]: Filed Dec. 2, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF APPEALS

Notice is Herby Given that United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on December 5, 1955.

Dated: January 31, 1956.

LLOYD H. BURKE,
United States Attorney;

By /s/ LYNN J. GILLARD,
Assistant United States Attorney, Attorneys for Defendant.

[Endorsed]: Filed January 31, 1956.

In the United States District Court for the Northern District of California, Southern Division

No. 34,443

WILLIAM F. HOLCOMB and IDRIS M. HOLCOMB,

Plaintiffs.

vs.

UNITED STATES OF AMERICA,

Defendant.

REPORTER'S TRANSCRIPT

Thursday, August 25, 1955

Appearances:

For the Plaintiff:
BRONSON, BRONSON & McKINNON, By MAX WEINGARTEN, ESQ.

For the United States:
HON. LLOYD H. BURKE,
United States Attorney, by
LYNN GILLARD, ESQ.,
Assistant United States Attorney.

The Clerk: Holcomb vs. United States, on trial.

Mr. Gillard: Ready.

Mr. Weingarten: Ready.

The Clerk: Will counsel please announce their appearances?

Mr. Weingarten: Max Weingarten.

Mr. Gillard: Lynn Gillard of the U. S. Attorney's office, appearing for the government.

The Court: Proceed, Mr. Weingarten.

Mr. Weingarten: Your Honor, this is a suit for refund of taxes and should be rather quick, because the parties have agreed that this case should be tried on the basis of the facts that are admitted in the pleadings and as contained in the stipulation of facts filed with this court.

It is also stipulated that there is only issue involved, namely, whether under the facts of this case the plaintiffs were entitled to file a joint return for the calendar year of 1951 pursuant to the provisions of Section 51 of the 1949 Internal Revenue Code.

Section 51 of the Code provides that a husband and wife may file a single return, and subdivision (b) (5) then goes on to say that the status as husband and wife shall be determined as of the close of the year, and an individual who is legally separated

from his spouse under a decree of divorce of separate maintenance shall not be considered as [3*] married.

Plaintiffs were both residents of California in the year 1951, the year with which we are concerned.

On August 3, 1951, the wife was awarded an interlocutory decree of divorce which under California law does not become final for one year.

The sole issue is whether under these facts the plaintiffs were entitled to file a joint return for the year '51, the year in which the interlocutory decree was entered but before the final decree was entered.

There are several decisions squarely in point, both Tax Court decisions and two Circuit Court decisions.

The Court: Excuse me just a second. Are you reading from some brief that you have prepared or just notes?

Mr. Weingarten: Not a brief; just some summary notes.

The Court: Do you intend to give me a brief?

Mr. Weingarten: If your Honor wishes, yes, I would like to.

The Court: I am just wondering about the wisdom of it. If I can just take down what cases you are citing, you needn't read them.

Mr. Weingarten: All right.

The Court: There are some Tax Court decisions?

Mr. Weingarten: Yes. The Tax Court decision squarely in point is the Eccles case, Marriner S.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Eccles, 19 T.C., [4] 1049, affirmed by the Fourth Circuit, 208 Fed. 2d. 796 involving the very issue.

The Court: What state was that?

Mr. Weingarten: Utah.

The Court: Is there a similar statute there?

Mr. Weingarten: Yes.

The Court: Thank you.

Mr. Weingarten: The next case is Humphreys Evans, 19 T.C. 1102, involving a case in Colorado, affirmed by the Tenth Circuit, 211 Fed. (2) 378. And in researching the case, I find that exactly one month ago, on July 25, 1955, a Tax Court decision involving the same issue in California was also decided in favor of the plaintiff. The case involved is William G. Ostler, Tax Memorandum 1955, 207. I have a photostatic copy of the decision because it might not be published yet.

The only other thing I wanted to point out, if your Honor would like a brief on these points, is that the tax Court and the Circuit Court decisions hold that whether a person is maried or not depends upon his status according to the state law.

The Court: Yes.

Mr. Weingarten: And I have cases to the effect that in California a person is not divorced after rendering of the interlocutory decree, and also that the interlocutory [5] decree is not identical with a separate maintenance decree. And if your Honor wants, I will gladly prepare a brief on that point.

The Court: Just give me the California decisions.

Mr. Weingarten: 16 Cal. Juris. 2d. 412. That is a summary of California law.

The Court: I would rather have the citations.

Mr. Weingarten: That is the citation, 16 Cal. Juris. 2d. page 412.

The Court: Is that the citation of a case?

Mr. Weingarten: No; it is like American Juris. of the country; it is a summary of the California law. It cites many cases to the effect that it is elementary that an interlocutory decree of divorce does not dissolve the marriage and that the parties remain married. Similarly Code Section 61 of California provides that a marriage within one year is void.

The Court: Just a minute. Marriage within one year is void?

Mr. Weingarten: Yes.

The Court: You mean it is a prohibition against remarriage?

Mr. Weingarten: That's right; within one year after the interlocutory decree.

The Court: That wouldn't necessarily make it not [6] final in the sense that the parties are not separated.

Mr. Weingarten: Well, if the divorce were to be final, then the parties could remarry.

The Court: Well, let us suppose that the California law says that it shall be a felony if they ever remarry again.

Mr. Weingarten: No, because they stayed here——

The Court: Let us suppose if they ever remarry again it will be a felony.

Mr. Weingarten: Well, I don't know what the

result would be then, but the reason is, and it states so here, that the interlocutory decree of divorce does not dissolve the marriage.

The Court: Yes, I appreciate that.

Mr. Weingarten: All right.

The Court: But you have no California cases?

Mr. Weingarten: Oh, yes. I think I would prefer, if your Honor likes, within one week to file a brief on that point.

The Court: You couldn't do it quicker than that?

Mr. Weingarten: Oh, yes, I could do it quicker, your Honor.

The Court: Because my commission expires on the 31st.

Mr. Weingarten: What time would be convenient?

The Court: When I hear the government, if you can agree on a date, I would like to get it. [7]

Mr. Weingarten: I could do it sooner, your Honor.

The Court: Let me hear the government then.

Mr. Gillard: As counsel has stated, this problem has been passed upon by the Tax Court.

The only case which I believe is of particular interest to the Court is the Eccles cited by counsel, and that passes, presumably, directly upon the issue here. The Ostler case cited by Mr. Weingarten follows the Eccles case without further discussion, and in the Evans case a little different point was involved.

I am not in disagreement with counsel that, under the California law, the interlocutory decree does

not dissolve the marriage. I don't think that there is any particular question about that, although as your Honor indicated in his questions, the interlocutory decree itself is final and res judicata after the appropriate time for appeal has passed. The proceeding cannot be dismissed on the motion of one party without the consent of the other or any such thing as that; it is a final decree res judicata of the issues determined in the interlocutory decree, including property settlement rights.

But to me the interesting part about the Eccles case is that when your Honor reads that case you will notice that the Court does not discuss the issue of whether or not pursuant to the interlocutory decree the parties are [8] legally separated. The statutory language that we are dealing with in this case under Section 51 of the Internal Revenue Code is that it has been alleged, for the purpose of filing a joint return—shall not include persons legally separated.

The Court: I think it says legally separated by decree.

Mr. Gillard: Legally separated by a decree of divorce or a decree of separate maintenance. The Court in the Eccles case was determining as far as the decree of divorce was concerned. The issue was solely whether or not the marriage was dissolved, not whether they were legally separated. I think the two things are distinguishable.

The Court: How did the issue get into the Tax Court? On a deficiency because they filed joint returns?

Mr. Gillard: In the Eccles case there was a deficiency, yes; in this case because it was paid and a refund is sought.

The Court: Wouldn't it be substantially the same question presented?

Mr. Gillard: The same question is presented in the Eccles case as is presented in this case. I am pointing out to the Court that I don't believe the Eccles case met the issue.

The Court: I see. [9]

Mr. Gillard: And I will call your attention in that connection to a California case, Stauter vs. Carithers, 185 Cal. 160, in which the issue to be decided was whether or not persons were legally separated under an interlocutory decree of divorce.

The Court: What do you say would be the situation of a wife who was the defendant in a California case in which an interlocutory decree had been entered against her and within the time period, before the expiration of the six months the husband died intestate. Would she inherit his estate?

Mr. Gillard: The marriage is undissolved.

The Court: She would get the regular wife's share?

Mr. Gillard: That is correct.

The Court: That would have some relevancy, it seems to me, as to whether or not they were divorced or separated.

Mr. Gillard: That is correct, except we are trying to find out, I think, in this case whether or not Congress was trying to prevent filing joint returns only by persons who were finally divorced or by

virtue of some lesser status, and the language used in Section 51 is "persons lawfully separated."

The Court: Have you any citations dealing with the historical background of that section of the Code, the legislative history? [10]

Mr. Gillard: There is a reference to it in the Eccles case.

The Court: To the legislative history?

Mr. Gillard: Yes, your Honor.

The Court: What do they say Congress' intention was?

Mr. Gillard: There are two different situations. The second rule with reference to this situation we are dealing with, they say this:

> "This rule is in substance the same as that provided in existing law. The second rule is that an individual legally separated (although not absolutely divorced) from his spouse under a decree of divorce or separate maintenance shall not be considered as married."

so there the Congressional intent was likewise apparently not for the purpose of determining whether there was an absolute decree of divorce or whether or not the persons were lawfully separated, maintaining two separate households. The purpose was to prevent the filing of joint returns where two separate households were maintained in a situation where they were lawfully separated and there is some sort of a court decree.

The Court: Do the facts here state in substance

that the parties were in fact living apart after the decree? I assume they were. [11]

Mr. Gillard: Does the stipulation cover that, counsel?

Mr. Weingarten: Yes.

Mr. Gillard: This California case I cited, Stauter vs. Carithers, is a case which arose under Section 223 of the Civil Code which prevents a woman who was not lawfully separated from her husband from adopting children without the consent of the husband. In that case there was an interlocutory decree of divorce and the California court decided that she was a woman lawfully separated from her husband pursuant to this interlocutory decree—the same language that is used in Section 51 here.

The Court: I would assume that follows. I would assume that as soon as they started living together the interlocutory decree become nugatory. Wouldn't the divorce then become not final? Wouldn't they be condoning whatever——

Mr. Gillard: Oh, yes. I think the Court misunderstood me. If the parties go back together during that interlocutory year, neither party then is entitled to a final decree. The Stauter case dealt with a case in which the husband and wife were lawfully separated under an interlocutory decree, and during that period of time one of the parties attempted to adopt a child. And the court went on to say that although the divorce was not final at the time, nonetheless they were separated and lawfully separated by virtue of the interlocutory decree, and, as a matter [12] of fact, under the provisions of it, it

couldn't be effective unless they remained separated. I think that case, together with the fact that the Eccles case did not come to issue on that point serves to indicate, at least to my mind, that the Tax Court plus the Congressional intent as shown in the language of the Eccles case above cited, didn't meet the issue that actually Congress intended to raise in this situation.

The Court: Can we agree as to a date when you can both exchange and give me briefs? I would assume that the briefs can be rather brief. Would Tuesday be too much of a rush for both of you to exchange and give them to me?

Mr. Gillard: Simultaneous briefs?

The Court: I don't want reply briefs at all. Would that be agreeable?

Mr. Weingarten: Yes.

Mr. Gillard: Yes.

Mr. Weingarten: Your Honor, could I reply?

The Court: Oh, yes indeed. Are you finished?

Mr. Gillard: Yes, your Honor.

Mr. Weingarten: I would only like to take issue with counsel's statement that the Eccles case didn't meet the point. The Eccles case met the point squarely. The government made two arguments. One was that the interlocutory decree was a decree of divorce and seemingly conceded the [13] point that the decree was not a final decree. The next argument was if it wasn't a final decree it was a decree of separate maintenance and the court met this issue squarely. And I am reading now from the brief:

> "Were they then legally separated under a decree of separate maintenance? Like the term 'decree of divorce,' the term 'decree of maintenance' is a term of art and carries a definitive legal meaning.
>
> "Fundamental differences in the nature of the action brought and the relief requested exist in suits for divorce in which an interlocutory decree may be entered and suits for separate maintenance, and on the face of it the decree here involved looked towards a final divorce, not a decree of separate maintenance. The law of Utah, which is controlling in this proceeding, illustrates some of the distinctions."

and then they cite, for instance, the venue provisions are different in divorce and separate maintenance. They also said:

> "No provision was made in the decree here involved for support or separate maintenance of any kind * * *"

now, exactly the same thing applies in California. For instance, for a divorce proceeding it is necessary that the parties be domiciled in California. For separate maintenance [14] it is not necessary and even a nonresident may bring an action for separate maintenance.

The purpose of a suit for separate maintenance in California and as used all over the country is to force the husband to make periodic payments for the wife. That is a suit for separate maintenance.

In this case, the same as in the Eccles case, the wife prevailed; but, as your Honor will see, there is no provision made at all for any payment, either periodic payments of alimony or for separate maintenance for the wife, and therefore it couldn't possibly be a decree for separate maintenance.

The Court: Can she under California law apply at the end of the decree for that?

Mr. Weingarten: Oh, yes, she can apply for separate maintenance even without asking for divorce.

The Court: No, before there is an interlocutory decree of divorce——

Mr. Weingarten: No.

The Court: And no mention made for support?

Mr. Weingarten: No, that is final.

The Court: She cannot apply?

Mr. Weingarten: Not any more if the interlocutory is silent. I have this here. There is another distinction. The trial court has jurisdiction to modify a separate maintenance decree by granting the wife additional support even [15] after the decree has become final; but if an interlocutory decree does not award any alimony, she is precluded forever.

The Court: Are you reading that?

Mr. Weingarten: Yes, I am sure of it, but I will cite your Honor authorities for that effect.

I would also like to point out, your Honor, that the Evans case dealt with this issue also, exactly, and here is the conclusion they reached.

The Tenth Circuit indicated that the terms "separate maintenance" and "interlocutory decree" are not synonymous and that Congress was fully fa-

miliar with the legalistic meaning of these terms and that if Congress had meant to include interlocutory decree, it certainly would have been a simple matter for it to do so. And then the Court concluded that the interlocutory decree is not identical with a decree of separate maintenance.

I would also like to point out to your Honor that I have studied the Senate Committee reports to the 1954 Revenue Act and they deal in many situations with Circuit Court decisions decided as late as May 1954 where the courts decided a certain issue which Congress decided to change. These cases were decided in March, '53. So Congress and the government were fully familiar with the interpretations given to this section by the Court, yet they didn't try to change it, and it seems to me that—— [16]

The Court: Is it in the 1954 Code, too?

Mr. Weingarten: Yes, exactly the same words.

The Court: Identical?

Mr. Weingarten: Identical.

So it seems to me if the interpretation would have been inconsistent with Congressional intent, they could easily have modified it, and yet it wasn't done.

The Court: Do you have that or will you have that legislative history?

Mr. Weingarten: I will, yes.

The Court: All right, gentlemen. I will reserve decision unless there is something more you want to add.

Mr. Weingarten: That is Tuesday?

The Court: Yes, Tuesday, August 30th.

The Clerk: August 30th for submission.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 17 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ W. A. FOSTER.

[Endorsed]: Filed March 9th, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries.
Complaint, with exhibits.
Answer of Defendant.
Stipulation of Facts with exhibits.
Memorandum Opinion of Court.
Judgment.
Notice of Appeal.

Designation of Record on Appeal.

Order Extending Time to Docket Record on Appeal.

Reporter's Transcript of Proceedings.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 13th day of March, 1956.

[Seal] C.W. CALBREATH,
Clerk;

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15064. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. William F. Holcomb and Idris M. Holcomb, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 13th, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15064

WILLIAM F. HOLCOMB and IDRIS M. HOLCOMB,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Comes now the United States of America, appellant in the above-captioned proceeding by and through its attorney of record, Lloyd H. Burke, United States Attorney for the Northern District of California, and hereby states that it intends to rely upon the following points in this appeal:

The district court erred:

1. In deciding the issue in this proceeding in favor of the plaintiffs;

2. In failing and refusing to recognize and uphold the propriety of the determination by the Commissioner of Internal Revenue that the plaintiffs were not entitled to file a joint income tax return for the year ended December 31, 1951;

3. In holding and deciding that the plaintiffs were husband and wife on December 31, 1951, and

were entitled to file a joint income tax return for the taxable year ended on that date;

4. In failing and refusing to hold and decide that the taxpayers, who were legally separated (although not absolutely divorced) under an interlocutory decree of divorce on August 13, 1951, could not, within the meaning of Sections 25(b)(2)(b) and 51(b)(5) of the Internal Revenue Code of 1939, file a joint federal income tax return for the taxable year ended December 31, 1951;

5. In that its opinion and decision are not supported by, but are contrary to, the facts as stipulated by the parties; and

6. That its opinion and decision are contrary to the law and the regulations promulgated thereunder by the Commissioner of Internal Revenue.

/s/ LLOYD H. BURKE,
United States Attorney,

/s/ LYNN J. GILLARD,
Assistant United States
Attorney.

[Endorsed]: Filed March 6th, 1956.